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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

—♦—
No. 76-283
—♦—

PAUL R. BUTE, WILLIAM FEDOR, GEORGE DAVID DE PEDER,
RAYMOND G. PATRAS, THOMAS R. BURNS, RUSSELL J. LEAVY,
BERNARD J. SCHROEDER and JAMES JAEGER,
Petitioners,

v.

ROBERT J. QUINN, as Fire Commissioner for the City of Chicago,
Illinois, and WILLIAM E. CAHILL, REGINALD DUBOIS, QUINTON
J. GOODWIN and CHARLES A. POUNIAN, as Members of the City
of Chicago Civil Service Commission, and THE CITY OF CHICAGO,
ILLINOIS, a Municipal Corporation,
Respondents.

—♦—
On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Seventh Circuit
—♦—

REPLY BRIEF OF PETITIONERS
—♦—

Of Counsel:
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ROBERT P. DANK, on behalf of Petitioners,
respectfully submits this Reply Brief to the Court
pursuant to Supreme Court Rule 24(4) in further support
of the Petition for Certiorari to the United States Court of
Appeals for the Seventh Circuit.

Petitioners take exception to Respondents' assertion in their Brief in Opposition (page 5) that Petitioners have never explained to the district court or to the Court of Appeals their intention to prove that Chicago firefighters are not emergency personnel, for the reason that it is untrue. Petitioners' Complaint, filed with the District Court stated:

19. The foregoing classifications are without any rational justification in relation to any proper governmental function or purpose of the Defendants, in that, among other things:

a. The location of one's residence is not now and has never been, in practice, a determining factor in work assignment for any of the Plaintiffs or members of their class, and the Defendant Fire Commissioner has assigned firemen to work stations indiscriminately and at great variance and distances from residences.

b. The Defendant Fire Commissioner has on occasion, as a matter of disciplinary punishment, intentionally assigned firemen to locations great distances from their residence.

c. The operation of the Fire Department by the Defendant City and Defendant Fire Commissioner is of such a degree of sophistication that manpower requirements are easily scheduled and of such availability in an on-duty position, as to meet all emergency conditions.

Petitioners have never abandoned their intent to demonstrate that Chicago firefighters while off duty are not emergency personnel. The issue was briefed in Petitioners' Brief in Opposition to Defendants' Motion to Dismiss (pages 2-4, 8-9), in Petitioners' Brief on Appeal to the Court of Appeals (pages 8-9, 11, 25-26, 42) and in Petitioners' Reply Brief to the Court of Appeals (pages 14-15).

It has always been Petitioners' intention to demonstrate at trial that, unlike the police officers in *Detroit Police Officers Association v City of Detroit*, 385 Mich 519, 190 NW2d 97 (1971), *appeal dismissed*, 405 US 950 (1972), who were found by the trial court to be required to be armed and able to perform their law enforcement duties twenty-four hours a day, Chicago firefighters are not "on duty" after they have completed their assigned tour of uniformed duty. Although Petitioners are admittedly *emergency personnel* during their on-duty hours, Respondents improperly characterize that term as including periods of times not in contention in this action.

Respectfully submitted,

ROBERT P. DANK

Counsel for Petitioners

Of Counsel:

HARRY K. GOLSKI

Date: November 24, 1976